



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Gian Fulgoni et al. Art Unit : 3621
Serial No. : 09/532,890 Examiner : James A. Reagan
Filed : March 22, 2000
Title : SYSTEMS AND METHODS FOR COLLECTING CONSUMER DATA

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

(1) Real Party in Interest

comScore Networks, Inc., the assignee of this application, is the real party in interest.

(2) Related Appeals and Interferences

There are no related appeals or interferences.

(3) Status of Claims

Claims 18-36 are pending in this application, of which claims 18, 31 and 33 are independent. All claims have been rejected, and all claims have been appealed.

01 FC:2402

00000020 09532890

250.00 0P

(4) Status of Amendments

The claims have not been amended subsequent to the final rejection.

(5) Summary of Claimed Subject Matter

Independent claim 18 recites a method of collecting consumer data that includes, among other features, offering one or more incentives for prospective consumers to register with a provider of services, receiving a request at the provider of services from a consumer to register with the provider of services to receive at least one of the offered incentives, and registering the consumer with the provider of services. See, e.g., Specification at page 7, line 18 through page 8, line 5; page 19, line 17- page 21, line 14; and Fig. 4 (showing a registration step 200). The method includes modifying a browser application on the registered consumer's computer to enable communications sent to and from the consumer's computer to be directed through the

provider of services to record the consumer's network activity. See, e.g., Specification at page 20, line 4 through page 21, line 16 (such as the described software applet); and Fig. 4 (showing modifying the browser at step 202). The network activity is recorded and compiled on an individual consumer basis and an aggregated consumer basis using the assigned unique identifiers, which are identifiers that are persistent across different network sessions. See, e.g., Specification at page 21, line 26 through col. 23, line 8; page 23, line 18 through page 26, line 20; and Fig. 4 (such as steps 204-210).

Independent claim 31 recites a method of recording at least part of data transmitted during a secure session of network communication that includes, among other features, negotiating by a service provider server a separate secure session with the computer of the consumer, thus initiating a secure session with the computer of the consumer. See, e.g., Specification at page 17, line 18 through page 18, line 17; and Fig. 5 (such as step 252). The service provider server also negotiates another secure session with the destination server to which the data request is being communicated. See, e.g., Specification at page 17, line 18 through page 18, line 17; and Fig. 5 (such as steps 252-258). The service provider server communicates the data requests to the destination server and receives the requested data over the secure session that has been negotiated with the destination server. See, e.g., Specification at page 17, line 18 through page 18, line 17; and Fig. 5 (such as steps 256-264). At least part of the data from the data server is recorded at the service provider. See, e.g., Specification at page 17, line 18 through page 18, line 17; page 21, line 26 through col. 23, line 8; and Fig. 5 (such as steps 252-264). The received data is re-addressed for delivery to the consumer's computer using the secure session between the server of the provider of services and the computer of the consumer. See, e.g., Specification at page 17, line 18 through page 18, line 17; and Fig. 5 (such as steps 252-264).

Independent claim 33 recites a method of collecting consumer data transmitted during secure sessions of network communication that includes, among other features, creating a panel of consumers and measuring network activities on the network between computers operated by members of the panel and computers of multiple third party providers of services and information on the network. See, e.g., Specification at page 1, lines 20 through page 2, lines 1-4. The measuring of network activities occurs during secure sessions of communication between

computers operated by members of the panel and computers operated by providers of services and information. See, e.g., Specification at page 17, line 18 through page 18, line 17; page 21, line 26 through col. 23, line 8; and Fig. 5 (such as steps 252-264). The network activities are measured at a point on the network between the computers of the members of the panel and third party providers of network services and information. See, e.g., Specification at page 17, line 18 through page 18, line 17; page 21, line 26 through col. 23, line 8; and Fig. 2 (such as domain 102) and Fig. 5 (such as steps 252-264). Furthermore, the point on the network where the network activities are measured is other than the computers of the panel members and computers of the third party providers. See, e.g., Specification at page 17, line 18 through page 18, line 17; page 21, line 26 through col. 23, line 8; and Fig. 2 (such as domain 102) and Fig. 5 (such as steps 252-264).

(6) Grounds of Rejection

Claims 18-36 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Chelliah et al. (U.S. Patent No. 5,710,887) in view of both Pistriotto et al. (U.S. Patent No. 6,138,162) and the Applicants' Alleged Admitted Prior Art (APA).

(7) Argument

Independent Claim 18 and Dependent Claims 19-30

Independent claim 18 recites a method of collecting consumer data that includes, among other features, offering one or more incentives for prospective consumers to register with a provider of services, receiving a request at the provider of services from a consumer to register with the provider of services to receive at least one of the offered incentives, and registering the consumer with the provider of services. The method includes modifying a browser application on the registered consumer's computer to enable communications sent to and from the consumer's computer to be directed through the provider of services to record the consumer's network activity. The network activity is recorded and compiled on an individual consumer basis and an aggregated consumer basis using assigned unique identifiers that are persistent across different network sessions.

Appellant respectfully requests reversal of the rejection of independent claim 18 and dependent claims 18-30 since Chelliah, Pistriotto and/or APA fail to describe or suggest at least two of these features. First, the prior art of record does not describe or suggest offering one or more incentives for prospective consumers to register with a provider of services, receiving a request at the provider of services from a consumer to register with the provider of services to receive at least one of the offered incentives, and registering the consumer with the provider of services. Second, none of the references describe modifying a browser application on the registered consumer's computer to enable communications sent to and from the consumer's computer to be directed through the provider of services, located at a domain on the network, to record the consumer's network activity. Below, these two points are separately and sequentially addressed in greater detail.

Returning to the first noted point of distinction, Chelliah does not describe or suggest offering one or more incentives for prospective consumers to register with a provider of services, receiving a request at the provider of services from a consumer to register with the provider of services to receive at least one of the offered incentives, and registering the consumer with the provider of services. The Office Action references col. 4, lines 17 et seq. of Chelliah as a basis for showing that Chelliah teaches offering one or more incentives for prospective consumers to register with a provider of services. However, the "incentives" described by the cited portion of Chelliah, and all other incentives described throughout Chelliah, are offered for purposes other than to incent "prospective consumers to register with a provider of services." In fact, the Chelliah incentives presuppose consumer registration, and thus, cannot be said to incent such preexisting registration. More particularly, in Chelliah, a registered user, e.g., a user who is already registered, within the "electronic mall" is provided with incentives to encourage the customer to complete a transaction. The incentives described by Chelliah are targeted, product-specific incentives for specific items, such as cost reductions or price discounts for a product item that the customer has been targeted as likely considering for a purchase. Information regarding the cost reductions is stored within the system in Chelliah, often in association with specific information relating to the customer and also associated with a supplier's items. See col. 4, lines 16-30; col. 20, lines 21-col. 23, line 57; and Figs. 10 and 12. Chelliah utilizes incentives for preexisting consumers in the electronic mall, e.g., for consumers already

registered. Therefore, the incentives described by Chelliah presuppose consumer registration in the electronic mall. Further, even if the distribution of incentives were not limited by Chelliah to electronic mall registrants, the purpose of the Chelliah incentives is to inspire purchase of particular goods/services offered by electronic mall merchants, and not to inspire/incent registration of any type.

The Office Action has suggested that Chelliah describes or suggests receiving a request at the provider of services from a consumer to register with the provider of services to receive at least one of the offered incentives. As described above, the incentives offered by the system of Chelliah are directed at consumers already registered within the system and/or for product-specific incentives to encourage a purchase. Chelliah does not describe or suggest receiving a request at the provider of services from a consumer to register with the provider of services to receive at least one of the offered incentives. In Chelliah, including col. 10, lines 14-30 cited by the Examiner, a participant is registered with the electronic service and customer-specific information is recorded at the time of registration, such as credit card account numbers and passwords to facilitate purchases. Any incentives that are provided in Chelliah are not provided to encourage a customer to register with a provider of services, but are provided after the registration step cited by the Examiner. Therefore, this rejection is improper and should be reversed.

With respect to the second noted point of distinction, Appellant points out that none of the references of the prior art of record describe or suggest modifying a browser application on the registered consumer's computer to enable communications sent to and from the consumer's computer to be directed through the provider of services, located at a domain on the network, to record the consumer's network activity. The Office Action correctly acknowledges a failure by Chelliah to describe or suggest modifying a browser application on the registered consumer's computer to enable communications sent to and from the consumer's computer to be directed through the provider of services, located at a domain on the network, to record the consumer's network activity (See, e.g., page 8, Final Office Action dated March 31, 2005). In order to overcome this deficiency, the Office Action has relied upon the alleged teachings of Pistriotto and/or Applicant's Alleged Admitted Prior Art (APA). Appellant disagrees.

Neither of Pistriotto and/or APA describe or suggest modifying a browser application in any manner. Instead, Pistriotto describes a process where a client computer uses information contained in a message from a proxy server to inform the routing of request messages to a specific caching proxy server.

The destination computer sends a message to the caching proxy server specifying the categories of request that the client computer will direct to the caching proxy server. The proxy server forwards this message to the client computer. The client computer uses the information contained in this message to direct requests messages to a specific caching proxy server based on a category ID. See Pistriotto at Abstract.

Notably, the Examiner relies upon the above-quoted language to suggest that Pistriotto is “effectively disclosing that the client’s browser is modified to be directed to another, separate destination different from the original.” See Final Office Action mailed March 31, 2005, at p. 3 and p. 8. However, using information contained in a message from a proxy server to direct request messages to a specific caching proxy server is not “effectively disclosing” that the client’s browser is modified. It is clear from the above-quoted language that Pistriotto does not describe or suggest modifying a browser application on the registered consumer’s computer to enable communications sent to and from the consumer’s computer to be directed through the provider of services to record the consumer’s network activity. Moreover, this excerpt cannot be said to suggest modifying a browser application, as it does not even mention such a browser application.

Appellant therefore submits that Pistriotto’s system of using information contained in a message from a proxy server to direct request messages to a specific caching proxy server cannot be equated to modifying a browser application on the registered consumer’s computer to enable communications sent to and from the consumer’s computer to be directed through the provider of services to record the consumer’s network activity, as recited in claim 18. Since the relied-upon section of Pistriotto does not describe or suggest modifying a browser application as recited in claim 18, this rejection is improper and should be reversed.

APA also does not describe or suggest modifying a browser application in any manner. The Examiner improperly relies upon a description of proxy servers beginning at page 11 as “clearly disclosing the claimed functionality of the instant invention.” See Final Office Action

mailed March 31, 2005, at p. 8. However, the section relied upon by the Examiner on page 11 of the present application is part of the "Detailed Description" section that begins on page 7 of the specification and is not APA. Therefore, it is improper to rely upon this description as APA.

Furthermore, and only for the sake of argument, a description of a proxy server that is placed between a client and the Internet does not itself describe or suggest modifying a browser application on the registered consumer's computer to enable communications sent to and from the consumer's computer to be directed through the provider of services to record the consumer's network activity, as recited in claim 18.

Thus, the alleged combination of the prior art of record fails to describe modifying a browser application on the registered consumer's computer to enable communications sent to and from the consumer's computer to be directed through the provider of services to record the consumer's network activity. Accordingly, this rejection is improper and should be reversed.

For at least these reasons, Appellant respectfully requests reconsideration and reversal of the rejections of claim 18, and dependent claims 19-30.

Independent Claim 31 and Dependent Claim 32

Independent claim 31 recites a method of recording at least part of data transmitted during a secure session of network communication that includes, among other features, negotiating by a service provider server a separate secure session with a consumer computer, thus initiating a secure session with the consumer computer. The service provider server also negotiates another secure session with a destination server to which the data request is being communicated. The provider of services communicates the data requests to the destination server and receives the requested data over the secure session that has been negotiated with the destination server. At least part of the data from the data server is recorded at the service. The received data is readdressed for delivery to the consumer computer using the secure session between the service provider server and the consumer computer.

Appellant respectfully requests reversal of the rejection of independent claim 31 and dependent claim 32, since Chelliah, Pistriotto and/or APA, nor any combinations thereof, fail to describe or suggest the features as recited in claim 31. As recited in claim 31, the service provider server securely transfers data between the consumer computer and a destination server

using two separately negotiated secure sessions, namely one session between the consumer computer and the service provider server and another session between the service provider server and the destination server. The service provider also records at least a part of the secure data that fulfills the data requests. Chelliah, Pistriotto, and/or APA, alone and/or combination, fail to teach or suggest these features.

In response to arguments presented in the Response filed February 14, 2005, the Examiner states:

However, it is obvious that communication between three separate entities requires two communication channels. Since secure communications is already disclosed for one channel, it would be more than obvious to repeat this endeavor for any subsequent channels required to complete the transactions. See Final Office Action mailed March 31, 2005, at p. 3.

Appellant submits that this rejection is improper as it fails to provide actual teachings in the prior art of record to support the Examiner's opinions. The burden is on the Examiner to establish a prima facie case of obviousness by showing, among other things, that the references of record teach or suggest all the recited claim limitations. The Examiner's opinion that it would have been obvious to repeat secure communications for any subsequent channel required to complete transaction was timely traversed. Since the Examiner has not provided actual evidence of the Examiner's opinions that it is "more than obvious to repeat this endeavor for any subsequent channels," this rejection is improper and should be reversed. See Final Office Action mailed on March 31, 2005, at page 3.

Moreover, the only specific support provided in the Office Action for the rejection of claim 31 is that the present application describes using a browser, such as Netscape Navigator or Microsoft Internet Explorer. See Final Office Action mailed March 31, 2005, at p. 12. The fact that the present application describes using one of these browser applications as an example of a browser type and the fact that they may be capable of secure online browsing, does not describe or suggest that a provider of services, which is the entity that is recording the consumer network activity, establishes two separate secure sessions, namely one with the registered consumer's computer and one with the destination server. The mere disclosure of a browser in no way

renders claim 31 obvious to one skilled in the art. Accordingly, this rejection is improper and should be reversed.

For at least these reasons, Appellant respectfully requests reconsideration and reversal of the rejections of claim 31, and dependent claim 32.

Independent Claim 33 and Dependent Claims 34-36

Independent claim 33 recites a method of collecting consumer data transmitted during secure sessions of network communication that includes, among other features, creating a panel of consumers and measuring network activities on the network between computers operated by members of the panel and computers of multiple third party providers of services and information on the network. The network activities are measured during secure sessions of communication between computers operated by members of the panel and computers operated by providers of services and information. The network activities are measured at a point on the network between the computers of the members of the panel and third party providers of network services and information. Furthermore, the point on the network where the network activities are measured is other than the computers of the panel members and computers of the third party providers.

Appellant respectfully submits that Chelliah, Pistriotto and/or APA, either alone or in combination, fail to describe or suggest at least two features as recited in claim 33. Chelliah, Pistriotto and/or APA do not create a panel of consumers and do not measure the secure session network activities of the panel at a point on the network between computers of the panel members and a third party provider of services. Rather, Chelliah describes an electronic mall that a user may enter to purchase items from different electronic storefronts. Chelliah does not describe measuring network activities that occur during secure sessions at the electronic mall, or any other point on the network between the members of the panel and third party providers of network services.

Pistriotto and APA fail to remedy these shortcomings of Chelliah. Instead, Pistriotto describes a caching proxy server that is used to reduce network traffic and does not describe or suggest measuring network activities during secure sessions of communications between

Applicant : Gian Fulgoni et al.
Serial No. : 09/532,890
Filed : March 22, 2000
Page : 10 of 16

Attorney's Docket No.: 13186-010001

computers operated by members of a panel and computers operated by providers of services and information.

Similarly, APA also does not describe or suggest these features. APA instead describes other previously proposed Internet monitoring activities and does not describe measuring network activities of secure sessions at a point on the network between computers of the members of the panel and a third party provider of network services and information.

For at least these reasons, Appellant respectfully requests reconsideration and reversal of the rejection of independent claim 33 and dependent claims 34-36.

The check in the amount of \$1045 is enclosed for the appeal brief fee and 4 month extension of time fee. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: November 30, 2005



Matthew T. Shanley
Reg. No. 47,074

Fish & Richardson P.C.
1425 K Street, N.W.
11th Floor
Washington, DC 20005-3500
Telephone: (202) 783-5070
Facsimile: (202) 783-2331

Appendix of Claims

1-17. (Cancelled).

18. (Presently Presented) A method of collecting consumer data, comprising:

- offering one or more incentives for prospective consumers to register with a provider of services;
- receiving a request at the provider of services from a consumer to register with the provider of services to receive at least one of the offered incentives;
- registering the consumer with the provider of services;
- assigning a unique identifier to at least one of the registered consumer and a computer of the registered consumer that is connected to a network to record network activity of the registered consumer using the unique identifier at the provider of services, wherein the unique identifier is persistent across different network sessions and the network is the Internet;
- modifying a browser application on the registered consumer's computer to enable communications sent to and from the registered consumer's computer to be directed through the provider of services, located at a domain on the network, to record the network activity of the registered consumer;
- directing at least some communications addressed to the destination server on the network from the registered consumer's computer to a server of the provider of services;
- receiving at the provider of services data requests from the registered consumer's computer addressed to the destination server;
- recording at the provider of services at least part of the received data requests as associated with the unique identifier;
- communicating the received data requests from the provider of services to the destination server capable of fulfilling the received data requests;
- receiving data at the provider of services in response to the received data requests from the destination server;
- recording at the provider of services at least part of the received data as associated with the unique identifier;

communicating the received data from the provider of services to the registered consumer's computer;

aggregating the received data requests and received data associated with more than one unique identifier based on the recorded network activity of the registered consumers associated with the unique identifiers; and

generating a database by the provider of services of individual and aggregated consumer network activity, wherein the individual consumer network activity includes the received data requests and the received data that is recorded as being associated with the unique identifier, and wherein the aggregated consumer network activity includes the received data requests and the received data that is aggregated as being associated with the more than one unique identifiers.

19. (Previously Presented) The method according to claim 18, wherein the offered incentives include at least one of faster network delivery and performing data caching.

20. (Previously Presented) The method according to claim 18, wherein the registering the consumer includes receiving from the consumer personal information about the consumer.

21. (Previously Presented) The method according to claim 20, wherein the personal information includes at least one of consumer age, consumer income level, consumer education level, consumer gender and consumer household size.

22. (Previously Presented) The method according to claim 18, wherein the consumer network activity includes transaction information, the transaction information including at least one of time of transmission of a data set, location of computing device, date of transmission of a data set, currency paid, type of product purchased, product purchased, type of service purchased, network address of the intended recipient of a data set, click-through address, banner advertisement impression, and permission e-mail received, and combinations thereof.

23. (Previously Presented) The method according to claim 18, wherein the recording at least part of the received data includes filtering the received data so that only data of interest is recorded.

24. (Previously Presented) The method according to claim 23, wherein the filtering is based on a known format of a web page in the received data.

25. (Previously Presented) The method according to claim 18, further comprising generating a log of the consumer network activity by the provider of services, the log including consumer demographics as well as particular URLs visited by the consumer.

26. (Previously Presented) The method according to claim 18, further comprising analyzing the database of consumer network activity to extract estimates of projected revenue of a particular entity.

27. (Previously Presented) The method according to claim 18, further comprising analyzing the database of consumer network activity to extract estimates of commerce.

28. (Previously Presented) The method according to claim 18, wherein the recording at least part of the received data requests includes:

when the provider of services receives a request for data in a secure session from a computer of the consumer, negotiating by the server of the provider of services a separate secure session with the computer of the consumer, thus initiating a secure session with computer of the consumer;

communicating the received request for data from a server of the provider of services to the destination server capable of supplying the data;

negotiating by the server of the provider of services another secure session with the destination server for the requested data;

receiving at the server of the provider of services the requested data sent by the destination server during the secure session with the destination server;

recording at least part of the data received from the destination server at the provider of services; and

re-addressing the received data for delivery to the computer of the consumer during the secure session between the server of the provider of services and the computer of the consumer,

whereby the server of the provider of services securely transfers data to and from the computer of the consumer to the destination server and at a same time monitors the content of the secured data.

29. (Previously Presented) The method according to claim 28, wherein the request for data is augmented with the unique identifier when transmitted to the destination server.

30. (Previously Presented) The method according to claim 18, wherein provider of services is independent of providers of access to the Internet .

31. (Previously Presented) A method of recording at least part of data transmitted during a secure session of network communication, comprising:

when the provider of services receives a request for data in a secure session from a computer of the consumer, negotiating by a server of the provider of services a separate secure session with the computer of the consumer, thus initiating a secure session with computer of the consumer;

communicating the received request for data from a server of the provider of services to a destination server capable of supplying the data;

negotiating by the server of the provider of services another secure session with the destination server for the requested data;

receiving at the server of the provider of services the requested data sent by the destination server during the secure session with the destination server;

recording at least part of the data received from the destination server at the provider of services; and

re-addressing the received data for delivery to the computer of the consumer during the secure session between the server of the provider of services and the computer of the consumer,

whereby the server of the provider of services securely transfers data to and from the computer of the consumer to the destination server and at a same time monitors the content of the secured data.

32. (Previously Presented) The method according to claim 31, wherein the request for data is augmented with the unique identifier when transmitted to the destination server.

33. (Previously Presented) A method of collecting consumer data transmitted during secure sessions of network communication, comprising:

creating a panel of consumers; and

measuring network activities on a network between computers operated by members of the panel and computers of a multitude of third party providers of services and information on the network,

wherein the measuring of network activities occurs during secure sessions of communication between computers operated by members of the panel computers operated by providers of services and information, and

wherein the measuring of network activities occurs at a point on the network between the computers of the members of the panel and a third party provider of network services and information, the point on the network being other than the computers of the members of the panel and computers of third party providers of services and information.

34. (Previously Presented) The method according to claim 33, wherein the computers of the members of the panel are general purpose computers, and wherein the computers of the providers of services and information are data servers.

35. (Previously Presented) A method according to claim 33, wherein measuring includes:

recording by a provider of consumer data collecting services at least part of data transmitted, during a secure session of network communication, comprising:

when the provider of consumer data collecting services receives a request for data in a secure session from a computer of a panel member, negotiating by a server of the provider of consumer data collecting services a separate secure session with the computer of the panel member, thus initiating a secure session with computer of the panel member;

communicating the received request for data from a server of the provider of consumer data collecting services to a destination server capable of supplying the data;

negotiating by the server of the provider of consumer data collecting services another secure session with the destination server for the requested data;

receiving at the server of the provider of consumer data collecting services the requested data sent by the destination server during the secure session with the destination server;

recording at least part of the data received from the destination server at the provider of consumer data collecting services; and

re-addressing the received data for delivery to the computer of the panel member during the secure session between the server of the provider of consumer data collecting services and the computer of the panel member,

whereby the server of the provider of consumer data collecting services securely transfers data to and from the computer of the data server to the destination server and at a same time monitors the content of the secured data.

36. (Previously Presented) The method according to claim 34, wherein the request for data is augmented with the unique identifier when transmitted to the data server.